

Small Agri-Biodiesel Producer Credit FAQ

This memo is the NBB's interpretation of the Small Agri-Biodiesel Producer Credit provisions of the federal Energy Bill. It should not be construed by anyone as offering tax advice. NBB will continue to reiterate to entities intending to claim the credit that they should seek the services of a qualified tax professional.

1. What is the Small Agri-Biodiesel Producer Credit?

The Small Agri-Biodiesel Producer Credit is a production incentive created in the 2005 Federal Energy Bill.

2. Who is eligible?

The credit is eligible for biodiesel producers who meet the following requirements:

- Produce agri-biodiesel (biodiesel from first use vegetable oils and animals fats), and
- Who, at all times during a tax year, have agri-biodiesel production capacity that does not exceed 60 million gallons.

3. What is the value of the credit?

The value of the credit is 10 cents for each gallon of qualified agri-biodiesel produced in a tax year.

4. What agri-biodiesel qualifies to receive the credit?

The credit is applicable to those gallons which are produced in a tax year that are sold by the producer to another person:

- For use by that person in the production of a qualified biodiesel mixture as part of their trade or business;
- For use by that person as a fuel in a trade or business; or
- Who sells the agri-biodiesel at retail to another person and places the fuel in that person's fuel tank; or

The credit is also applicable to those gallons which the producer uses in a tax year to produce a biodiesel mixture for use in its business, or uses it in its neat form as fuel as part of its business.

5. Is there a cap?

Yes. No more than 15 million gallons of qualified agri-biodiesel production in a tax year is eligible.

6. What type of credit is the Small Agri-Biodiesel Producer Credit?

The Small Agri-Biodiesel Producer Credit is an income tax credit, and only an income tax credit. This means that, unlike the credits available to the blender, it can not be used to reduce excise taxes and there is no payment provision for "excess credits." Excess credits can be carried over to later years, however.

7. When is it available?

The credit is effective for those tax years ending after August 8, 2005.

8. Are there limitations on the credit?

Yes, the credit is treated as part of the so-called general business credit, and general business credits usable in any given year may not exceed (a) the excess of the taxpayer's net income tax over (b) the greater of (i) the taxpayer's tentative minimum tax or (ii) 25% of so much of the taxpayer's regular tax liability as exceeds \$25,000. The operation of this credit may be illustrated by the following example. Assume that a biodiesel producer has produced and sold 10,000,000 gallons of agri-biodiesel in a given year and thus its credit is \$1,000,000. Assume further that its net income tax (before credits) is \$3,500,000, and its tentative minimum tax (generally its alternative minimum tax) is \$2,800,000. The amount of the credit that actually reduces the producer's tax liability is \$700,000 computed as follows:

Net income tax		\$3,500,000
Reduce by the greater of		
AMT	\$2,800,000	
25% [\$3,500,000 - \$25,000]	\$ 868,750	<u>\$2,800,000</u>
Credit Usable		\$ 700,000

In addition, there are complex rules designed to aggregate the production of related parties in computing the 60 million gallon productive capacity limitation and the 15 million production limitation.

9. Can the credit be passed through LLCs, other pass-through entities, and cooperatives?

Yes. Specific provisions allow the credit to be passed through to the owners of LLCs, partnerships, and S corporations. Also, there are provisions allowing a cooperative to pass the credit through to its patrons on the basis of patronage.

10. Is the credit sunset?

Yes. The credit sunsets December 31, 2008 (unless extended).